

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 03 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

MIRANDA DEFENBAUGH, an
individual, on behalf of herself and of
others similarly situated, and all others
similarly situated,

Plaintiff - Appellee,

v.

JBC & ASSOCIATES PC, a corporation;
et al.,

Defendants - Appellants.

No. 04-16866

D.C. No. CV-03-00651-JCS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Northern District of California
Joseph C. Spero, Magistrate Judge, Presiding

Submitted July 24, 2006^{**}
San Francisco, California

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Before: HUG, MERRITT^{***}, and PAEZ, Circuit Judges.

In this Fair Debt Collection Practices Act (“FDCPA”) case, appellants JBC & Assocs., P.C., and Jack Boyajian (collectively, “JBC”) appeal the district court’s award of attorneys’ fees and costs to Miranda Defenbaugh (“Defenbaugh”). The district court awarded Defenbaugh \$46,496.32 in attorneys’ fees and costs. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

We review de novo the legal premises on which a district court relies to determine attorneys’ fees, and we review for clear error the factual determinations underlying the award. *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1147-48 (9th Cir. 2001). In addition to statutory damages, a successful plaintiff in an FDCPA action may be awarded costs and “a reasonable attorney’s fee” as determined by the district court. 15 U.S.C. § 1692k(a)(3). The appropriate fee award is calculated by using the hybrid lodestar approach set forth by the Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). Under this approach, the court multiplies a “reasonable hourly rate” by “the number of hours reasonably expended on the litigation.” *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 564 (1986). Although the resulting “lodestar” figure

^{***} The Honorable Gilbert S. Merritt, Senior Judge, United States Court Appeals for the Sixth Circuit, sitting by designation.

presumptively represents the reasonable fee award, the court may adjust the figure upwards or downwards based on other considerations. *See id.* Here, the district court explicitly outlined and properly applied this methodology, providing the requisite level of detail and clarity in its order. *See Ferland*, 244 F.3d at 1148 (requiring a clear and concise articulation of the court’s reasons for the fee award).

JBC argues that we should “readjust” the lodestar approach in non-complex FDCPA cases. We disagree. The Supreme Court has mandated the lodestar method for determining reasonable statutory attorneys’ fees. We have approved application of the lodestar calculation in the FDCPA context. *See id.* at 1149 n.4.

JBC also argues that the fees and costs awarded by the district court were clearly excessive. We disagree. The district court has broad discretion in calculating attorneys’ fees and costs. *Hensley*, 461 U.S. at 437; *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1211 (9th Cir. 1986). Here, the district court’s calculation of the lodestar figure was carefully reasoned and supported by the evidence. The district court scrutinized the hours claimed by Defenbaugh and eliminated those that were improperly documented, unreasonable, or excessive. It also evaluated the reasonableness of the attorneys’ hourly rates in light of the fees charged by attorneys with similar years of experience, attorneys familiar with consumer class action litigation, and the fees awarded to Defenbaugh’s attorneys in

other cases. Although the hourly rates awarded were substantial, the district court's conclusions were plausible in light of the evidence. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573-74 (1985) (discussing the “clearly erroneous” standard of review and noting that “[i]f the district court’s account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it”). Finally, the district court did not abuse its discretion in refusing to decrease the lodestar amount based on a “lack of success” because in addition to the \$1,000 maximum statutory damages that the court awarded, Defenbaugh also recovered benefits for the putative class.

In sum, the district court applied the proper legal standard with deliberate and detailed reasoning that was plausible in light of the evidence. The court did not abuse its discretion in determining the reasonable attorneys’ fees owed to Defenbaugh. We therefore affirm the district court’s order awarding Defenbaugh attorneys’ fees and costs.

AFFIRMED.